

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 6002(b) of the)	
Omnibus Budget Reconciliation Act of)	
1993)	WT Docket No. 07-71
)	
Annual Report and Analysis of)	
Competitive Market Conditions With)	
Respect to Commercial Mobile Services)	

To: The Commission

REPLY COMMENTS OF SOUTHERNLINC WIRELESS

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Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”) hereby submits its reply comments in the above-captioned proceeding regarding competitive conditions in the market for commercial mobile radio services (CMRS).¹

As the industry continues to consolidate, the role of regional carriers has become even more essential in ensuring that consumers throughout the country will have access to competitive mobile wireless services. SouthernLINC Wireless agrees with MetroPCS that a “complete and accurate evaluation of the state of CMRS competition as mandated by Congress” must necessarily include an evaluation of roaming and its impact on the public and on competitive regional and rural carriers.² SouthernLINC Wireless also

¹ / “WTB Seeks Comment on CMRS Market Competition”, Public Notice, WT Docket No. 07-71, DA 07-1652 (rel. April 6, 2007) (“Public Notice”).

² / Comments of MetroPCS at 2.

urges the Commission to reconsider its method for analyzing service availability, as well as to consider the market power possessed by others over various critical wholesale inputs for commercial mobile service and the resulting harm to consumers.

I. CONSOLIDATION IN THE MARKET FOR MOBILE WIRELESS SERVICES

A. The Role of Regional Carriers in a Consolidating Market

In its Public Notice, the Commission specifically requested comments on the effects of consolidation in the mobile telecommunications market.³ As the Commission is well aware, the level of consolidation in the wireless sector has been dramatic, as highlighted by the Commission's own data in previous market competition reports.⁴

Not only has the number of nationwide carriers decreased from six to four, but numerous smaller regional and rural carriers have been acquired by larger carriers, thus further reducing the options available to US consumers.⁵ For example, the *Eleventh*

³ / Public Notice at 5.

⁴ / Of the nation's top twenty-five CMRS carriers (by number of subscribers) as of December 31, 2004, eight have since been acquired by other carriers, one (iPCS) is an affiliate of Sprint Nextel, and one (Qwest) provides all of its wireless services as a reseller of Sprint Nextel CDMA services. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, 11039 Table 4 (2006) ("*Eleventh CMRS Market Competition Report*").

⁵ / One trend little-noted by the Commission is the acquisition by larger carriers of the licenses and/or network assets of smaller carriers, even where the carrier itself is not acquired. For example, a recent Order issued by the Commission's Public Safety and Homeland Security Bureau addressed, among other things, the sale by three Tier III carriers of their licenses and networks to Verizon Wireless. *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Petitions for Waiver of Cellular Phone of Kentucky, Inc., Litchfield County Cellular, Inc. d/b/a Ramcell of Kentucky, and Litchfield County Cellular, Inc. d/b/a Ramcell of Oregon*, CC Docket No. 94-102, Order, FCC 07-77 (rel. May 2, 2007), ¶¶ 12, 14.

CMRS Market Competition Report revealed a sharp decline in the percentage of consumers living in counties where five or more CMRS carriers operate.⁶ The corresponding increase in the percentage of consumers living in counties served by four or fewer carriers – up from approximately 12.7 percent to over 49 percent⁷ – dramatically illustrates the impact of industry consolidation on consumer choice.⁸ Moreover, the consolidation trend shows no sign of abating.

As MetroPCS points out, the CMRS industry's significant advancements and improvements in pricing, quality, and service offerings have been driven by the existence of multiple and diverse CMRS carriers, and regional carriers have been the source of several innovative services and pricing plans in the industry and have brought competitive service options to millions of consumers who may have otherwise been without access to mobile wireless services.

SouthernLINC Wireless agrees with MetroPCS that as the large carriers continue to expand and consolidate, the competition provided by regional carriers has become even more essential in ensuring that consumers throughout the country will have access to competitive mobile wireless services. Not only do regional carriers bring competitive advanced wireless services to consumers in areas that receive only limited – if any –

⁶ / *Eleventh CMRS Market Competition Report*, 21 FCC Rcd at 10964 ¶ 41 and at 11043 Table 11. According to this table, the percentage of consumers living in counties served by five or more carriers decreased from 87.3 percent to 50.8 percent, with a corresponding increase in the percentage of consumers living in counties served by fewer than five carriers from 12.7 percent to 49.2 percent.

⁷ / *Eleventh CMRS Market Competition Report*, 21 FCC Rcd at 11043 Table 11.

⁸ / As discussed below in Section II of these Reply Comments, SouthernLINC Wireless believes that these figures in fact significantly overstate the number of CMRS carrier options available to many consumers, particularly those who do not live in major metropolitan areas or along major highway corridors.

coverage from the networks of the nationwide carriers, they also compete head-to-head with the nationwide carriers in markets throughout the country, including major metropolitan areas.

The regional and local focus of the smaller non-nationwide carriers enables them to tailor their networks to meet the needs of the people who live and work there, providing the type of coverage and service that goes beyond the highway corridor to reflect the actual lives of the area's residents and communities. Their local and regional presence results in strong ties both with and within the communities they serve, which is reflected in the level of service they provide to consumers in these areas. These qualities make regional carriers an attractive service option for consumers, hundreds of thousands of whom opt to receive service from a regional carrier even in larger metropolitan areas served by the nationwide carriers.

Regional carriers also continue to be a source of innovation within the wireless industry and are often the first to introduce new services, pricing plans, and other innovations within their regions, despite the presence of the nationwide carriers. For example, within its service area in the Southeastern United States, SouthernLINC Wireless was the first iDEN carrier to provide wireless data service and the first CMRS carrier to provide a prepaid service that included "push-to-talk" service – services that the nationwide carriers operating in this region have since attempted to match. Regional carriers have also been the source of innovative service plans, such as the flat-rate unlimited local and long distance calling plans offered by MetroPCS and Leap Wireless –

a consumer-friendly pricing model that may soon spread to the nationwide carriers as

B. Effects of Market Consolidation

As MetroPCS stated in its initial comments, one of the most dramatic effects of well-documented industry consolidation has been in the ability of large nationwide carriers to exercise market power with respect to roaming services, and consideration of the state of roaming is an essential element of any evaluation of the state of competition in the broader CMRS market.”

The Commission has long recognized that roaming is a vital component of a competitive CMRS marketplace and plays an essential role both in encouraging the development and deployment of advanced wireless services and in making these services available to as many US consumers as possible. For example, the Commission determined in 1996 that roaming is a “critical element of CMRS service”¹¹ and concluded that “ubiquitous roaming on CMRS systems is important to the development of a seamless, nationwide ‘network of networks’,” a conclusion that the Commission reaffirmed in 2000 and again in 2005.¹² It is only through roaming that *all* consumers are able to obtain access to mobile wireless services nationwide while ensuring that such services are deployed as widely as possible, conferring significant benefits to both

⁹ / See Comments of MetroPCS at 10.

¹⁰ / Comments of MetroPCS at 2.

¹¹ / *Reexamination of Roaming Obligations of Commercial Mobile Service Providers*, WT Docket No. 05-265, Memorandum Opinion & Order and Notice of Proposed Rulemaking, 20 FCC Rcd 15047, 15056 ¶ 21 (2005) (“2005 *Roaming NPRM*”) (citing *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 (1996)).

¹² / 2005 *Roaming NPRM*, 20 FCC Rcd at 15050-51 ¶ 8 (internal citations omitted).

consumers and the nation as a whole in areas ranging from the economy to public safety and national security – the very result envisioned by Section 1 of the Communications Act.¹³

As MetroPCS stated in its initial comments, “Although there are four national carriers in many markets, the differences in air interfaces effectively means that there are really only one or two possible roaming partners in each market.”¹⁴ This means that a monopoly or duopoly situation exists in most markets for the provision of wholesale (carrier-to-carrier) automatic roaming. As discussed above, the *Eleventh CMRS Market Competition Report* found that over 49 percent of US consumers live in counties served by four or fewer carriers. Because CMRS carriers can only roam with carriers that utilize the same air interface technology (*e.g.*, CDMA, GSM, iDEN, or AMPS), the likelihood of finding alternative roaming partners in these areas with compatible technologies is greatly reduced.

SouthernLINC Wireless agrees with MetroPCS that the Commission cannot ignore the current roaming situation in evaluating the competitiveness of the CMRS market, particularly in light of industry consolidation. As demonstrated above, carriers seeking automatic roaming have few, if any options, a situation which will only be exacerbated as the industry continues to consolidate. This in turn significantly limits the ability of customers of regional carriers – many of whom have few, if any, service provider options – to obtain nationwide access to mobile wireless services.

¹³ / 47 U.S.C. § 151 (establishing the Federal Communications Commission “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination...a rapid, efficient, Nation-wide...wire and radio communication service with adequate facilities at reasonable charges..”).

¹⁴ / Comments of MetroPCS at 3.

II. SERVICE DEPLOYMENT AND CONSUMER OPTIONS

One of the centerpieces of the Commission's annual report to Congress on competition in the CMRS market is its analysis of the number of service provider options available to US consumers. As noted above, the Commission reported in the *Eleventh CMRS Market Competition Report* that its analysis showed that the percentage of consumers living in counties served by five or more carriers decreased from 87.3 percent to 50.8 percent, with a corresponding increase in the percentage of consumers living in counties served by fewer than five carriers from 12.7 percent to 49.2 percent. However, as the Commission has acknowledged in its previous reports, as well as in the Public Notice, this analysis is based on a flawed methodology that in fact overstates the extent of a service provider's coverage, both in terms of the geographic areas and population covered.¹⁵

Although the service areas of the nationwide CMRS carriers cover large portions of the United States, there are many areas of the country that they do not reach, including not only rural and remote regions, but also smaller population centers not located near major highways. According to the National Telecommunications Cooperative Association (NTCA), the average member company responding to its annual survey indicated that it competes with between three and five carriers, but many of these other carriers "serve only a part of the NTCA member company service area – typically, the most populated (and hence most profitable) part."¹⁶

For purposes of the Commission's market competition reports, if a carrier serves even just a small portion of a county – such as along a highway that cuts through the

¹⁵ / See, e.g., Public Notice at 2 – 3.

¹⁶ / Comments of NTCA at 3.

corner of the county – then the Commission counts that carrier as serving the entire county, regardless of how many residents of the county actually have access to its service.¹⁷ This inherently flawed methodology creates a dangerously inaccurate picture of the true extent of wireless service options available to a significant number of US consumers. Furthermore, this methodology does not take into account that these services are, by their nature, mobile, and that there are numerous consumers who may live in areas covered by four or more CMRS operators but who, for a variety of reasons (*e.g.*, work, travel, etc.) either want or need access to wireless services while in more underserved areas.

To its great credit, the Commission recognizes both this methodological flaw and its significance in measuring the extent of carrier coverage and competition, and accordingly has requested data and comments on methods that would enable the Commission to analyze the provision of service at a more granular level.”

Unfortunately, an immediate solution to the Commission's request is not readily apparent. As CTIA pointed out in its initial comments, more granular information from carriers may be competitively sensitive, and the cost of collecting and compiling such information may be overly burdensome or prohibitive, especially for smaller carriers with more limited resources.¹⁹

Until a more accurate method of measuring service availability and coverage can be developed, the Commission should be wary as to how data based on the current flawed methodology is utilized. In particular, the Commission should not allow such inherently

¹⁷ / *See, e.g.*, Public Notice at note 10.

¹⁸ / Public Notice at 3.

¹⁹ / Comments of CTIA at 4.

unreliable data to be considered in the context of any rulemaking proceeding or other decisional action, nor should the Commission give persuasive weight or value to this data in its assessment of the state of competition in the CMRS market.

111. SIGNIFICANT MARKET CONSTRAINTS ON WHOLESALE INPUTS CRITICAL TO THE PROVISION OF MOBILE WIRELESS SERVICES

In its initial comments, Sprint Nextel focused on the issue of the control that AT&T and Verizon exercise over special access services, which Sprint Nextel characterize as “essential production inputs to the provision of Commercial Mobile Radio Services...”²⁰ According to Sprint Nextel, AT&T and Verizon are using their control over the bottleneck dedicated transport facilities required to connect wireless carriers’ cell sites with their switches to extract excessive and supra-competitive profits from the wireless carriers forced to rely on these critical inputs.²¹ Sprint Nextel points out that a reduction of the prices charged by AT&T and Verizon for special access would have an enormous impact on wireless consumers.²² The benefits of such price reductions would effectively be passed on to consumers, whether directly through lower rates or indirectly through the carriers’ ability to use these resources to, as Sprint Nextel states, “more quickly deploy new technologies or services such as wireless broadband services.”²³

SouthernLINC Wireless shares Sprint Nextel’s concerns regarding the price of special access and its impact on the cost of providing wireless service to consumers.

SouthernLINC Wireless also notes that all of the arguments presented by Sprint Nextel

²⁰ / Comments of Sprint Nextel at 1.

²¹ / *Id.* at 5 – 9.

²² / *Id.* at 8.

²³ / *Id.* at 8.

regarding special access apply with equal force to another critical input to the provision of mobile wireless service – wholesale roaming services.

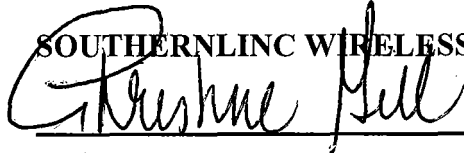
As discussed above, issues of technical compatibility mean that CMRS carriers generally have only one or two potential roaming partners in any given geographic market, thus conferring on these potential partners monopoly or duopoly power over the provision of wholesale automatic roaming. CMRS carriers seeking roaming therefore face a situation that is the same, or even worse, than Sprint Nextel has described for the market for special access services. As SouthernLINC Wireless and numerous other regional and rural carriers can attest, the nationwide carriers have used their market power over wholesale automatic roaming to engage in the practice of charging unreasonably high rates or denying access to roaming altogether – in other words, “the practice of harming competition by imposing unreasonable costs on competitors.”²⁴

Accordingly, SouthernLINC Wireless urges the Commission to consider in its next CMRS market competition report the market power possessed by others over the various critical wholesale inputs for commercial mobile service, including special access and wholesale automatic roaming services.

²⁴ / *Id.* at i (Executive Summary).

WHEREFORE, THE PREMISES CONSIDERED, SouthernLINC Wireless respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

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